



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-B-C-, INC.

DATE: FEB. 29, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a non-public school for the autistic and developmentally disabled, seeks to employ the Beneficiary permanently in the United States as a computer systems analyst. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. Upon *de novo* review we will dismiss the appeal.

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). As required by statute, the petition is accompanied by ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The priority date of the petition is July 31, 2013. *See* 8 C.F.R. § 204.5(d). The Director determined that the Petitioner had not established that the Beneficiary met the minimum requirements of the labor certification. The Director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The petitioner must establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Part H of the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master's degree in computer science & engineering.
- H.5. Training: None required.
- H.6. Experience in the job offered: None required.
- H.7. Alternate field of study: Computer science.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.

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H.10. Experience in an alternate occupation: 24 months of experience as a computer systems analyst.

H.14. Specific skills or other requirements: Demonstrated proficiency in: ability to successfully manage diverse IT projects such as expansion of a customized system, business process analysis, defining requirements, building user interfaces, database design including Logic implementation. System maintenance and support of 500 or more users. ASP.NET, JQUERY, JSON, C#, web services, MS SQL and DNN. Willingness to observe and interact with therapists, staff and autistic children in adjacent classrooms to develop appropriate IT solutions. Ability to pass a background check, which includes fingerprinting with the U.S. Department of Justice. Employer will accept any suitable combination of education, training or experience as specified in items H-4 through H-10 above.

Part J of the labor certification states that the Beneficiary possesses a master's degree in computer science and engineering from [REDACTED] Portugal, completed in 2004. The record contains a copy of the Beneficiary's *Licenciatura* in informatics and computer engineering diploma and transcripts from [REDACTED] Portugal, issued in 2004. The record contains a *licenciatura* in military sciences with a specialty in artillery certificate and transcripts from the [REDACTED] Portugal, issued in 1993-1994. The record contains a copy of the Beneficiary's Equivalence Plan for year 1999/2000 and a course explanation for each course taken by the Beneficiary from the [REDACTED]

The record contains an evaluation of the Beneficiary's educational credentials prepared by [REDACTED] for [REDACTED] on May 15, 2009.¹ It states that the Beneficiary's *licenciatura* degree in informatics and computer engineering is equivalent to an integrated bachelor's degree and master's degree in computer science and engineering from a regionally accredited college or university in the United States. The evaluation notes that the five-year program attended by the Beneficiary typically requires the equivalent of graduation from high school in the United States and that the Beneficiary may have entered the program with advanced standing based on his previous *licenciatura* in military sciences. The evaluation concludes that the Beneficiary has the equivalent of a bachelor's degree in military sciences and the equivalent of a bachelor's degree and a master's degree in computer science and engineering from a regionally accredited college or university in the United States. The evaluation references the National Office of Overseas Skills Recognition Department of Employment, Education and Training (NOOSRDEET) publication, the International Handbook of Universities and information provided

¹ USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a beneficiary's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the beneficiary's eligibility. See *id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

by the Academia Militar. The record does not contain evidence that the references cited by the evaluation are peer reviewed sources of information about foreign credentials. Moreover, the NOOSRDEET publication is an Australian publication which provides advice for credential comparisons to Australian education credentials. We note that the record does not demonstrate that an Australian bachelor's degree is equivalent to a bachelor's degree in the United States. Additionally, the International Handbook of Universities provides only basic information regarding a country's education credentials:

- It includes higher education institutions that offer at least post-graduate degrees and/or four-year professional diplomas.
- It briefly describes the higher education system in each country.
- It includes an index to fields of study.
- It provides a list of regional and international higher education organizations.

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." *See* <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.²

The Director informed the Petitioner in a January 28, 2015, request for evidence (RFE) that, according to EDGE, a *licenciatura* (licentiate) degree awarded prior to 2007 from Portugal is comparable to "a bachelor's degree in the United States."³ In response to the RFE, the Petitioner submitted a copy of the [REDACTED] evaluation which does not address EDGE's conclusions. The Petitioner also submitted a copy of the World Education Services (WES) degree equivalency tool stating that a *licenciado* is equivalent to a bachelor's and master's degree. The WES equivalency does not address the findings of EDGE and does not cite any reference materials. The WES equivalency notes that it

² In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that we provided a rational explanation for our reliance on information provided by AACRAO to support our decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's three-year foreign "baccalaureate" and foreign "Master's" degrees were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

³ The credential description notes that the licentiate is awarded after completion of four to five years of university study.

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is based on information provided by the Petitioner and is not based on verified information or documents and may change upon document verification and analysis.

The Petitioner also submitted a Wikipedia explanation of degrees under the [REDACTED] process to establish that the Beneficiary's degree is equivalent to an integrated bachelor's and master's degree. Online content from Wikipedia is subject to the following general disclaimer:

Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. . . **Wikipedia cannot guarantee the validity of the information found here.** The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. . . If you need specific advice (for example, medical, legal, financial or risk management), please seek a professional who is licensed or knowledgeable in that area.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer (accessed February 8, 2016). Reliance on *Wikipedia* is not favored by federal courts. See *Badasa v. Mukasey*, 540 F. 3d 909 (8th Cir. 2008).

The Petitioner cites the Wikipedia information as finding a degree under the old system to be equivalent to a master's degree. However, Wikipedia later states that, "Both the old and new master's degrees are the first graduate degree before a doctorate, and both the old and new *licenciatura* degrees are undergraduate degrees."

The Petitioner also submitted a copy of the entry requirements for programs at [REDACTED] Portugal, a strategic partnership between Portuguese universities and research centers and the [REDACTED]

[REDACTED] While the Petitioner contends that the entry requirement of a [REDACTED] 2nd cycle degree, a master's degree, or a *licenciatura*" for the [REDACTED] Portugal PhD program is indicative that the *licenciatura* is equivalent to a master's degree in the United States, the website indicates that these are the same academic qualifications required for an applicant to apply to the PhD programs, master's program and executive master's programs. The academic qualifications set forth are the minimum required for an applicant to be welcome to apply. The academic qualifications listed do not state that a *licenciatura* is the equivalent of a master's degree in the United States.

On appeal, the Petitioner submits an evaluation prepared by [REDACTED] for the [REDACTED], Computer Science Department, on July 20, 2015. It states that the Beneficiary's licentiate in information systems and computer engineering, combined with his licentiate in military sciences, included completion of courses which would meet the requirement for admission into a graduate program in computer science and engineering at [REDACTED] It states further that the Beneficiary completed courses for the licentiate in information systems and computer engineering comparable to the graduate course requirements at [REDACTED] and would meet the number of

credits necessary and core requirements toward a master's degree in computer science engineering at [REDACTED]

It concludes that the Beneficiary holds the equivalent of a master's degree in computer science and engineering. However, the evaluation does not address the findings of EDGE and does not cite any reference materials. Moreover, the evaluation combines two separate degrees from two different schools to find that the Beneficiary holds the equivalent of a master's degree.

In reviewing [REDACTED] analysis of the courses taken by the Beneficiary he double-counts courses completed by the Beneficiary as both meeting the requirement for admission into a graduate program (i.e. equivalent to an undergraduate/bachelor's degree) and as graduate course requirements meeting the number of credits necessary for a master's degree (i.e. graduate degree). In reviewing the descriptions of the courses completed by the Beneficiary and the descriptions of the courses required for completion of a bachelor's degree in computer science and engineering at [REDACTED] it appears that many of the courses completed by the Beneficiary need to be combined to cover the subjects included in only one of the required courses at [REDACTED]. For example:

- The Beneficiary's courses in "Theory of Computation," "Logic for Programming and Distributed Systems," and "Computational Logic" appear to include topics which are covered in one [REDACTED] course "Parallel and Distributed Computation Units."
- The Beneficiary's courses in "Operating Systems," and "Computer Networks I" appear to include topics which are covered in one [REDACTED] course "Introduction to Operating Systems."
- The Beneficiary's courses in "Algorithms and Data Structures," and "Analysis and Synthesis of Algorithms" appear to include topics which are covered in one [REDACTED] course "Introduction to Algorithms and Theory of Computing Units."

See [REDACTED]

The Beneficiary's transcripts do not include composition/writing, general education, and basic science courses which appear to be required by [REDACTED] for an undergraduate degree in either computer science or computer science and engineering.

In reviewing the descriptions of the courses completed by the Beneficiary and the descriptions of the courses required for completion of a master's degree in computer science at [REDACTED] while the titles of the courses completed by the Beneficiary may be similar, the topics covered in the Beneficiary's courses appear basic and not equivalent to the advanced level of study provided in the master's level courses by the same name required by [REDACTED] for a master's degree. The Beneficiary's transcripts do not include writing and communication, internship or research courses which appear to be required by [REDACTED] for a master's degree in computer science.

On appeal, the Petitioner provides information on the prerequisites and course requirements for master's degrees at [REDACTED] and [REDACTED] as well as information on the course requirements for an integrated Bachelor of Science and Master of Science program at [REDACTED]. As discussed above regarding the [REDACTED] evaluation: (1) a course by course analysis of the Beneficiary's completed courses reveal that they need to be combined to cover the same topics

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included in a single undergraduate course at the U.S. school in question; (2) the Beneficiary is missing essential courses in composition/writing, general education and basic science for completion of either the bachelor's or master's degree or the integrated program at the U.S. school in question; and (3) the Beneficiary's courses do not include the advanced level of study seen in graduate level classes in the U.S. Finally, a review of the courses completed by the Beneficiary at [REDACTED] and [REDACTED] shows that the Beneficiary repeated similar courses at both institutions which have been counted as meeting separate requirements in the Petitioner's comparison against the course requirements for U.S. degrees.

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the labor certification states that the offered position requires a master's degree in computer science and engineering or computer science, along with 24 months (two years) of experience in the proffered position of computer systems analyst. No alternate combination of education and experience is accepted.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an “advanced degree” is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

When the beneficiary relies on a bachelor’s degree (and five years of progressive experience) for qualification as an advanced degree professional, the degree must be a single U.S. bachelor’s (or foreign equivalent) degree. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that “[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor’s degree with at least five years progressive experience in the professions.” H.R. Conf. Rep. No. 955, 101st Cong., 2d Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the legacy INS responded to criticism that the regulation required a beneficiary to have a bachelor’s degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990) and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that a beneficiary must have at least a bachelor’s degree:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold “advanced degrees or their equivalent.” As the legislative history . . . indicates, the equivalent of an advanced degree is “a bachelor’s degree with at least five years progressive experience in the professions.” Because neither the Act nor its legislative history indicates that bachelor’s or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor’s degree*.

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (Emphasis added).

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold at least a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. Where the analysis of the beneficiary’s credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the “equivalent” of a bachelor’s degree rather than a “foreign equivalent degree.” In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the “foreign equivalent degree” of a United States baccalaureate degree. See 8 C.F.R. § 204.5(k)(2).

In addition, a three-year bachelor's degree will generally not be considered to be the "foreign equivalent" of a United States baccalaureate degree. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977).⁴ *See Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree); *see also Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010) (the beneficiary's three-year bachelor's degree was not the foreign equivalent of a U.S. bachelor's degree).

Therefore, based on the conclusions of EDGE, the evidence in the record is not sufficient to establish that the Beneficiary possesses a degree that is, by itself, the foreign equivalent of a U.S. master's degree. Instead, the Beneficiary possesses educational credentials that the Petitioner claims are, when combined together, equivalent to a U.S. master's degree. However, for the reasons set forth above, a combination of educational credentials each individually less than the equivalent of a U.S. bachelor's degree is not a "foreign equivalent degree" within the meaning of 8 C.F.R. § 204.5(k)(2). Similarly, a combination of education credentials each individually less than the equivalent of a U.S. master's degree is not a "foreign equivalent degree."

The Petitioner relies on the Beneficiary's licenciate degree in computer science and engineering combined with his licentiate degree in military sciences as being equivalent to a U.S. master's degree in computer science and engineering. Where the analysis of a beneficiary's credentials relies on a combination of lesser degrees and/or work experience, the result is the "equivalent" degree rather than a full U.S. or foreign equivalent degree required for classification as a professional or advanced degree professional.

On appeal, the Petitioner contends that the Director relied solely on the EDGE database and did not give proper weight and/or disregarded the quality and caliber of the Beneficiary's degrees and other evidence that the Beneficiary's five-year degree program in information systems and computer engineering and four-year degree in military sciences is the substantial equivalent of a U.S. master's degree. As discussed above, federal courts have determined that we provided a rational explanation for our reliance on information provided by AACRAO to support our decision. *See Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009); *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010); and *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010). None of the evaluations provided by the Petitioner specifically address the conclusions of EDGE.

The Petitioner's contention that nine-years of education consisting of a five-year integrated bachelor's and master's degree program in information systems and computer engineering and a four-year bachelor's degree in military science meets the requirements of a master's degree in computer science and engineering is unpersuasive. The Petitioner contends that the Beneficiary's five-year licentiate was an integrated bachelor's and master's degree program. According to EDGE,

⁴ In *Matter of Shah* the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

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Portugal has an integrated bachelor's and master's degree program which results in a *Mestrado Integrado* (integrated master) that is comparable to "a master's degree in the United States." The Petitioner's assertion is comparable to claiming that a U.S. bachelor's in computer science and a U.S. bachelor's degree in military science can be combined to be the equivalent of a master's degree in the United States.

Beyond the decision of the Director, the Petitioner has not established that the Beneficiary has the required experience as a computer systems analyst.

Part K of the labor certification states that the Beneficiary possesses employment experience as a computer systems analyst with [REDACTED] Portugal, from October 1, 2004, until May 1, 2008; an adjunct professor with [REDACTED] Portugal, from October 1, 2005, to September 30, 2008; and with the Petitioner in the proffered position from October 1, 2009, to July 31, 2013. The labor certification lists no other employment. The ETA Form 9089 was signed by both the Petitioner and the Beneficiary under penalty of perjury.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, USCIS may consider other documentation relating to the beneficiary's experience. *Id.*

The record contains an undated experience letter from [REDACTED] Director of Hotel Management Program, on [REDACTED] letterhead, stating that [REDACTED] University employed the Beneficiary as an adjunct professor from September 1, 2005 to September 1, 2008. [REDACTED] states that, as Director of the Computer Science Program and Director of the New Technologies Department at [REDACTED] University, he was the Beneficiary's supervisor. He states that, in addition to his teaching duties, the Beneficiary was assigned to manage several IT projects, developing a student portal to be used by all students on three campuses and expanding the customized Human Resource Management System. However, these duties are inconsistent with the duties listed on the labor certification, which only state that the Beneficiary performed teaching duties. Additionally, the duties set forth by [REDACTED] are inconsistent with the claimed 5.0 hours per week of work listed on the labor certification. It seems unlikely that the Beneficiary would be able to prepare for and teach two courses, as well as manage several IT projects, in only 5 hours per week. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, while the Beneficiary's teaching duties establish that he meets the specific skills or other requirements set forth in section H.14 of the labor certification, the duties are not actively those of a computer systems analyst. Finally, even if we accepted that the Beneficiary's experience with [REDACTED] University was qualifying experience in the proffered position, it would only account for 137 days of full-time experience.⁵

⁵ While the Beneficiary was employed for 1095 days, according to the labor certification he was only employed for five

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The record also contains an undated experience letter from [REDACTED] Director of Services, on [REDACTED] letterhead, stating that the Beneficiary was employed by the Portuguese Army as an officer and computer systems analyst from October 1, 2004 to May 1, 2008. [REDACTED] states that, as the director of the [REDACTED]

[REDACTED] he was the Beneficiary's direct supervisor and part of his chain of command. The experience attested to in the letter would account for more than 24 months of experience in the proffered position. However, the letter does not provide an address for [REDACTED]

In any future filings, the Petitioner must submit evidence that conforms to 8 C.F.R. § 204.5(g)(1) to establish that the Beneficiary meets the minimum educational and experience requirements as stated on the labor certification.

Finally, the Petitioner did not establish its ability to pay the proffered wage. The petitioner must demonstrate its continuing ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay "shall be in the form of copies of annual reports, federal tax returns, or audited financial statements." *Id.*

The record contains a letter from the Petitioner's chief financial officer (CFO) in lieu of financial statements stating that it has the ability to pay the proffered wage. The record also contains a copy of the Beneficiary's paycheck indicating that he received \$31,163.32 in gross salary by June 15, 2014. In general, 8 C.F.R. § 204.5(g)(2) requires annual reports, federal tax returns, or audited financial statements as evidence of a petitioner's ability to pay the proffered wage. That regulation further provides: "In a case where the prospective United States employer employs 100 or more workers, the director *may* accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage." (Emphasis added.) Information from [REDACTED] indicates that the Petitioner generates revenues that are \$10 million less than those claimed on the Form I-140 immigrant petition and employs only 81 individuals, rather than the 400+ claimed on the Form I-140. *See Matter of Ho* at 591-92. Further, public records indicate that the Petitioner has an Internal Revenue Service tax lien and several New York State tax liens. Accordingly, we need not exercise our discretion to accept the letter from the Petitioner's CFO.

The Petitioner did not submit its annual reports, federal tax returns, or audited financial statements for 2013, 2014 and 2015. While additional evidence may be submitted to establish a petitioner's ability to pay the proffered wage, it may not be substituted for evidence required by regulation.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

hours out of a 40-hour work week. As such, the Beneficiary gained 12.5% of full-time employment during this period.

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ORDER: The appeal is dismissed.

Cite as *Matter of A-B-C-, Inc.*, ID# 15719 (AAO Feb. 29, 2016)